IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 18TH JULY 2006 / 27TH ASHADHA,1928

WA.No. 1028 of 2006(C)

{IN W.P.(C)NO.24013/2005 OF THIS COURT}
.....

APPELLANTS:
---

1. SOMARAJAN. M., DEPUTY DIRECTOR,
SURVEY AND LAND RECORDS,
COLLECTORATE, IDUKKI.

2. K.G. CHANDRASEKHARAN NAIR,
SUPERINTENDENT OF SURFEY AND LAND RECORDS,
OFFICE OF THE SUPERINTENDENT OF SURVEY AND
LAND RECORDS (RE-SURVEY), DEVIKULAM.

BY ADV. SMT.I.SHEELA DEVI

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
REVENUE (SPECIAL CELL) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF SURVEY AND LAND RECORDS,
BOARD OF REVENUE (SURVEY),
THIRUVANANTHAPURAM.

3. S. BABURAJ, DISTRICT HEAD SURVEYOR,
COLLECTORATE, THRISSUR.

R1 & R2 BY GOVERNMENT PLEADER SMT.WAHEEDA BABU
R3 BY ADV. SRI.C.T.RAVIKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ALONG WITH W.A.NO.1077/06 AND CONNECTED CASES ON 18/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR
& K.P.BALACHANDRAN, JJ.

- -

W.A.Nos.1028, 1077, 1138 & 1291 of 2006

- -

Dated this the 18th day of July, 2006

JUDGMENT

Abdul Gafoor, J.

Whether the exemption granted by Government to the members of Scheduled Castes/Scheduled Tribes in service by appropriate orders passed, as empowered by Rule 13 AA of the General Rules in the Kerala State and Subordinate Services Rules,1958 (for short 'the Rules') is applicable to the special tests prescribed as essential requirement as per the special rules for appointment to the post of Superintendent of Survey and Records, is the moot question debated in these appeals. The learned single Judge, as per the impugned judgment, held that the orders issued by Government granting

test exemption in terms of Rule 13 AA to the members of Scheduled Castes/Scheduled Tribes, will be applicable in respect of the special tests prescribed as well. Therefore, this appeal.

2. It is contended by the appellants that, as per the special rules for the Kerala Survey and Land Records service (Special Rules), no person shall be eligible for appointment as Superintendent of Survey by appointment by transfer, unless he possesses the required test qualification like the Head Surveyor's test, Account Test Lower and Revenue Test or other equivalent test. Therefore, these are special tests prescribed as essential qualifications for the post. The exemption in terms of the orders issued under Rule 13 AA read

with Rule 13 AB and 13B shall be applicable only to departmental tests and not to the tests which are made essential for a particular post as per the Special Rules. It is further submitted that these tests are essential qualifications even for the post of Head Surveyor, the feeder category to the post of Superintendent of Survey and Land Records. The writ petitioners, who belong to the Scheduled Castes/Scheduled Tribes, became Head Surveyors enjoying the exemption. Thereafter, they cannot, again seek exemption from the very same test which are prescribed as essential for the promotion post. It is further contended that Government is issuing orders as empowered under Rule 13 AA successively from 1972 onwards, granting temporary

exemption to members of Scheduled Castes/Scheduled Tribes in service. The exemption consecutively granted from 1972 for decades together is a permanent exemption. Therefore, it runs contra to the intention granting temporary exemption under Rule 13A. Relying on the decision reported in ***State of Kerala v. N.M.Thomas {AIR 1976 SC 490},*** *it is submitted* that while upholding the temporary exemption, the Supreme Court did not envisage it as a permanent affair. By reason of the orders passed successively in terms of Rule 13 AA, this exemption is now being used as a permanent feature. Ultimately majority of the persons holding the post of Superintendent of Survey and Land Records, are incumbents without Head

Surveyor's test and hence, the efficiency of the department of Survey and Land Records is adversely affected. It is further submitted that as under-qualified hands are promoted, the morale of qualified hands is eroded. Therefore, the appeals are to be allowed, setting aside the judgment impugned, the appellants submit.

3. The stand taken by Government is that exemption is not available in respect of the special tests. It is further contended by the appellants, including the State, that the duties and functions enjoined on the persons holding such posts require passing of these special tests. It is in consonance with Rule 13 and Rule 28(b)of the Rules, which provide that no one shall be eligible for

appointment by transfer or promotion, without the essential qualification prescribed as per the Special Rules.

4. It is contended by the respondents that the stand of the department, that exemption provided for the members of Scheduled Caste/Scheduled Tribe are not applicable to the special tests, is not justified. By reason of that the Government is attempting to equate exemption granted under Rules 13A, 13AA and 13AB on the one hand and 13B on the other. The former covers special tests. But the latter covers only the obligatory departmental test. The exemption as per the former provisions has no connection with the exemption as per the latter provision. The former takes in all qualifications other than

course/training. This is evident from Rule 13BB. On the other hand, Rule 13B exemption is only for obligatory departmental tests, which are specifically defined in Explanation in rule 12(7) of Part I Kerala Service Rules. In this regard, the decision in **State of Kerala v. Chathan {2005(1) KLT 75}** is relied on. It is further submitted that even going by the contention of the Government, the exemption available to the Scheduled Castes/Scheduled Tribes is not disputed. What is disputed is whether such exemption covers the special tests prescribed by the Special Rules.

5. The special qualifications relevant for the post of Superintendent, Survey and Land Records are **Head**

Surveyor's test, Account Test (Lower) and Revenue Test. These are the essential qualifications in terms of the Special Rules for appointment by transfer to the post of Superintendent of Survey.

6. Rule 13 of the General Rules provides that:

> "No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he--
>
> (a) possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules...." **{Emphasis supplied}**

7. Therefore, possession of special qualifications or the special test prescribed by the Special Rules is an

essential requirement for appointment by transfer as well. There cannot have any quarrel.

8. But Rule 13A of the General Rules provides that:

> (1) Notwithstanding anything contained in rule 13:
> (a) Where a pass in a special or departmental test is prescribed by the Special Rules of a service for any category, grade or post therein or in any class thereof, **a member of a service belonging to** any of the **scheduled castes or scheduled tribes who has not passed** the said test but is otherwise qualified and suitable for appointment to such class, category, grade or post may be appointed thereto temporarily." (Emphasis supplied)

This rule enables a Scheduled Caste hand being appointed to a post, even without acquiring the special or departmental test prescribed as per the Special Rules; which are made essential as per Rule 13. It is further provided in sub rule (2) of Rule 13A that this exemption is applicable only for three years and that a person so promoted if does not pass the test, shall have to face reversion. It may be noticed here that, Rule 13A(b) gives exemption for a similar term of two years to candidates belonging to other communities also, but confining to the tests newly introduced and not to those already prescribed. So far as Scheduled Castes/Scheduled Tribes candidates are concerned, they are entitled to exemption from the existing

tests as well as newly prescribed tests for the period proved in sub rule 13 A(2) and a further extended period of three years in terms of the proviso of to that sub rule, in the case of new tests.

9. Notwithstanding these stipulations, the Rules were further amended introducing Rule 13 AA that:

> "Notwithstanding anything contained in these rules Government may, by order exempt for specified period, any member or members belonging to a Scheduled Caste or a Scheduled Tribe and already in service, from passing the tests referred to in Rule 13 or 13A of the said Rules." (Emphasis supplied)

Thus, this rule enables the Government to exempt the members of Scheduled Castes/Scheduled Tribes from the Special

test prescribed as essential for appointment as per Special Rules, as referred to in Rule 13 or 13A even beyond the period covered by Rule 13 A, and for further periods as well. But this benefit is confined only to those belonging to Scheduled Castes/Scheduled Tribes, and who were in service on 13.1.1972 when the said rule was introduced. It is not available to new appointees after that date.These were the provisions that had been considered by the Supreme Court in ***N.M.Thomas case (cited supra).*** It was held therein that the special considerations given to Scheduled Castes/Scheduled Tribes do not in any way offend the equality clause as the classification was made with reasonable nexus of enabling Scheduled

Castes/Scheduled Tribes candidates to get their due share in promotion to higher posts. It was noticed as not a permanent affair, but a temporary affair.

10. After **N.M.Thomas's** dictum, the Government went on amending the Rules incorporating Rule 13AB which reads as under:

> "The orders exempting members of the Scheduled Castes and of the Scheduled Tribes who were in service on the 13th January, 1972, issued under rule 13 AA shall be and shall be deemed always to have been applicable to members of the Scheduled Castes and of the Scheduled Tribes who entered service after the said date also."
> (Emphasis supplied)

11. Thus, the exemption that was confined only to 3 years under Rule 13 A

(2) was enabled to be exempted by specific orders for further periods in the case of Scheduled Castes/Scheduled Tribes candidates, who were in service on 13.1.1972, by introducing rule 13 AA. The scope of Rule 13 AA and the orders issued thereunder is now to cover even those who entered service after 13.1.1972 as well, by introducing 13AB. This was after ***N.M.Thomas's*** case.

12. It could, perhaps, be doubted whether these exemptions would be applicable to any special test prescribed as essential qualification for a post. That was also cleared by introducing 13BB in the General Rules of the Rules to the effect that,

> "The provisions in Rule 13 A, 13 AA and 13B of these Rules shall not apply to the

> qualifying course/training prescribed for the members of the Kerala Fire Service and Kerala Fire Subordinate Service".

That means, the provisions in Rules 13A, 13AA and 13B apply to other qualifications.

13. The exemption provided in Rule 13AA thus covers every qualifications than the "qualifying course/training prescribed" for Fire Service personnel. Of course, Rule 13BB does not mention Rule 13 AB. But, Rule 13AB is only an extension of the exemption provided in 13AA. Therefore, the employees belonging to Scheduled Caste/Scheduled Tribe are entitled to exemption from any test other than the qualifying course/training prescribed for Fire Service Personnel.

This is clear from Rule 13BB. Therefore, in the light of 13BB, it is no longer a debatable question whether exemption from Special or Departmental test prescribed as essential qualification for a post is available to the members of Scheduled Castes/Scheduled Tribes in service or not.

14. Even otherwise also, it is so. Rules 13B of the Rules reads as under:

> "Notwithstanding anything contained in these rules or in the Special Rules, persons in Government service, who attain the age of 50 years and who have put in 25 years of service shall be eligible for permanent exemption from passing the obligatory departmental tests for all purposes such as promotion, appointment as full member of a service etc."

15. This rule covers everybody. The exemption provided is from "**obligatory departmental test**". This is intended for the incumbents who have crossed 50 years of age and completed 25 years of service. It is a permanent exemption. On the other hand, the exemption provided for in Rule 13A which is extended by Rule 13 AA and 13AB, is a temporary exemption from passing "**Special or Departmental tests**". Therefore, exemption envisaged in Rule 13 A and 13AA extended further by Rule 13AA and 13AB and that under Rule 13B are in respect of different types of tests. Those covered by 13A in respect of Scheduled Castes/Scheduled Tribes are special and departmental tests which include any qualification within the groups of

Special/departmental test, other than the qualifying course/training made mention of in Rule 13BB. It is, thus, clear that such exemption is available to the members of Scheduled Castes/Scheduled Tribes from the special test or departmental test, which are dealt with in Rules 13A, 13AA and 13AB, as the essential qualifications for being considered for appointment either by transfer or by promotion, as the case may be. It is not confined to obligatory departmental tests alone as contended by the appellants.

16. What are the obligatory departmental tests can be gathered, from the explanation under Rule 12(7) Part I K.S.R. It reads as under:

> The term 'obligatory departmental examination' means:-

(i) any test a pass in which is prescribed for the successful completion of probation or training of an officer, whether recruited direct or by transfer;

(ii) any test a pass in which is prescribed for the purpose of making an officer eligible for increment or for confirmation in any post;

(iii) any test a pass in which is prescribed for promotion to any higher post coming in the line of promotion in the Department concerned;

(iv) any test a pass in which is prescribed as a qualification for continuance in the post;

(v) any test a pass in which is newly prescribed for persons already in the service concerned.

These tests, being obligatory departmental tests, any other tests will necessarily be special tests mentioned in rule 13 and rule 13A. The tests which are prescribed as per the Special Rules, for the post of Superintendent of Survey and Land Records are not any of the tests mentioned in Explanation to Rule 12(7) of Part I K.S.R. Therefore, those are the special tests covered by Rules 13, 13A, 13AA and 13AB as well.

17. The other contentions now left to be considered is whether this exemption is available for appointment by transfer. Special qualifications are dealt with in Rule 13 of the Rules.

> "**No person shall be eligible for appointment to any service, class,**

category or grade or any post borne on the cadre thereof--”

unless he possesses the special qualification prescribed as per the Special Rules.

18. Appointment include appointment of different types viz., appointment by direct recruitment, appointment on promotion and appointment by transfer from one service to another. In Clause 13 A dealing with exemption also, only the word 'appointment' which obviously includes different types of appointments as indicated already alone is mentioned. It is this exemption which is enabled to be extended for further terms to those belonging to Scheduled Castes/Scheduled Tribes as per Rules 13AA and 13AB. Therefore, this exemption is applicable

to appointment by transfer as well. On the other hand, when the exemption is confined to promotion alone, it is so specified in the rules. For example, the exemption allowed under Rule 13 B, which enables the incumbents eligible "**for all purposes, such as promotion or appointment as full member of service etc.**"

19. Thus, appointment made mention of in Rule 13 and all the exemption provisions except Rule 13B includes appointment by transfer covered by Rule 28(b). This position is no longer res integre in the light of the Division Bench decision to which one among us (Justice Balachandran) is a party reported in **State of Kerala v. Chathan {2005(1) KLT 75}.**

20. The other important contention is with reference to the permanent nature of the exemption granted by successive orders issued as enabled in Rule 13AA, which are applicable to the incumbents covered by rule 13 AB also. It is true that in **N.M.Thomas's case**, the Apex Court had upheld the exemption granted to the Scheduled Caste/Scheduled Tribe hands, as it was not a permanent affair, but only a temporary exemption for a limited period. That was in respect of the provisions contained in Rule 13A read with Rule 13 AA. But it was subsequent to **N.M.Thomas's** case that Rule 13AB which is relevant for the case on hand was introduced enabling the exemption under Rule 13AA, to be extended further to the member of Scheduled Castes/Scheduled Tribes who

were appointed after 13.1.1972 as well. Therefore, the observations in **Thomas's** case cannot have any application to the provisions of Rule 13AB, unless 13AB is specifically challenged. True, the continued exemption and its permanent nature defeat the purpose of prescribing the special qualifications which are meant to meet the functional requirement of the posts concerned. Of course, that is a matter which the legislative authority to take note of. Unless there is a challenge to rule 13AB and orders passed under Rule 13AA granting such exemption, we are not expected to consider that aspect.

21. The contention of the Government is that the special tests prescribed are essential for the post in question to

discharge the functions attached. This being the test coming within the rules discussed above and the order passed thereunder, Government could have very well, while passing orders as empowered by Rule 13AA or 13AB, limited the exemption available to the Scheduled Castes/Scheduled Tribes, to the obligatory departmental tests alone and excluded the special tests which are according to them essential for the functional requirements of the posts. As the Government did not envisage that distinction while they issued orders as empowered by Rule 13AA and 13 AB, they cannot contend that such a distinction shall be made by the court. It is an area where the legislature or the executive shall have to act with their

learning and adequate data and information in the field concerned.

22. The very same incumbents seeking exemption enjoyed similar exemption from same or similar test when they were promoted to the present posts. That does not disable them from enjoying exemption when their turn for next promotion arises. The rules discussed above do not indicate that the exemption provided is a one time exemption available only for one step promotion.

In such circumstances, we have to confirm the impugned judgment and dismiss the appeals. We do so.

(K.A.ABDUL GAFOOR)
JUDGE

(K.P.BALACHANDRAN)
JUDGE

sk/

K.A.ABDUL GAFOOR
& K.P.BALACHANDRAN, JJ.

W.A.Nos.1028, 1138 & 1291 of 2006

"C.R."

JUDGMENT

18th July, 2006.